

DOCUMENT RESUME

03699 - [B2794019]

[House of Representatives' Amendment to the Energy Research and Development Administration's Authorization Bill for Fiscal Year 1978]. EMD-77-73; B-159687. September 27, 1977. 5 pp. + 3 enclosures.

Report to Rep. Olin Teague, Chairman, House Committee on Science and Technology; Sen. Henry M. Jackson, Chairman, Senate Committee on Energy and Natural Resources; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Energy (1600).

Contact: Energy and Minerals Div.

Budget Function: Natural Resources, Environment, and Energy: Energy (305).

Organization Concerned: Energy Research and Development Administration.

Congressional Relevance: House Committee on Science and Technology; Senate Committee on Energy and Natural Resources.

Authority: Atomic Energy Act of 1974. H.R. 6796 (95th Cong.). S. 1811 (95th Cong.).

The House amendment to the Energy Research and Development Administration (ERDA) authorization bill would substantially affect ERDA's basis for setting its price for uranium enrichment services. Findings/Conclusions: The House bill would not allow a Government enrichment price which covers such factors as business risk and return on equity. Failure to include such a component would perpetuate a barrier to private industry's eventual entry in the commercial uranium enrichment market and continue a pricing structure that results in a subsidy to enrichment customers. The Senate bill should more clearly identify the cost factors that ERDA should include in its price. The new Department of Energy should seek and encourage private companies to continue their efforts to pursue commercialization of advanced uranium enrichment technologies. Removing the enrichment pricing barrier is one of the ways the Government could encourage commercial participation. The House bill would continue a pricing structure which would result in a subsidy that would tend to discourage private enterprise. Recommendations: Congress should reject the provision in the House bill requiring the Comptroller General to certify that the price charge for uranium enrichment services does not recover a profit for the Government. (SS)

IMDG
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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

SEP 27 1977

IN REPLY
REFER TO:

B-159687

The Honorable Olin Teague
Chairman, Committee on Science
and Technology
House of Representatives

Dear Mr. Chairman:

On Wednesday, September 21, 1977, the House of Representatives accepted an amendment to the Energy Research and Development Administration (ERDA) authorization bill for fiscal year 1978 (H.R. 6796) that would substantially affect ERDA's basis for setting its price for uranium enrichment services. Since this version differs from S. 1811, passed by the Senate on July 12, 1977, House and Senate conferees must meet to resolve the differences.

We have some concern about both bills and are taking this opportunity to share them with you. In our view, both bills need to more clearly spell out the basis for uranium enrichment pricing that must be followed by ERDA. In particular, we are concerned that the House bill could result in setting uranium enrichment prices at levels which could discourage the establishment of a private uranium enrichment industry. In addition, the House version would require this Office to certify changes in the price for enriching services--a requirement that is inconsistent with our role in the legislative branch as an independent and objective evaluator of executive branch programs. We are asking that you make our concerns and the following reasons for them available to the conferees. For your convenient reference, pertinent excerpts from the House and Senate bills are contained in Enclosures I and II of this letter.

BASIS FOR URANIUM
ENRICHMENT PRICING

As you know, the General Accounting Office (GAO) has been extensively involved in the uranium enrichment area for a number of years. We have issued three major reports on

EMD-77-72

the subject of uranium enrichment pricing 1/, and numerous reports discussing the Government's uranium enrichment program. This involvement is the basis for the reservations we now have about the uranium enrichment pricing sections in both the House and Senate bills.

The House version, as amended, would set a floor and a ceiling for uranium enrichment prices. The floor would be the recovery of not less than the Government's costs over a reasonable period of time. The House bill's ceiling would prohibit any price increases greater than the sum of all the Government's costs plus the normal and ordinary business expenses which would otherwise be incurred by a private enricher. We interpret this to represent a ceiling price which would recover the Government's costs over a reasonable period of time--which ERDA is now required to do--plus some of the costs that ERDA does not now include in its pricing calculations, such as insurance and State and local taxes that a private enricher would have to recover. The language allowing the ERDA Administrator to set the price so as not to discourage the development of domestic sources of supply independent of ERDA was eliminated in the House version, but is still in the Senate version.

Therefore, the House bill would not allow a Government enrichment price which covers such factors as business risk and return on equity. In our opinion, these additional factors should be allowed. Failure to include such a component would (1) perpetuate a barrier to private industry's eventual entry in the commercial uranium enrichment market and (2) continue a pricing structure that results in a subsidy to enrichment customers.

While the Senate bill would allow the inclusion of these factors, we believe more clarification is necessary to specifically identify the cost factors that ERDA should include in its price.

1/Comments on Proposed Legislation to Change Basis for Government Charge for Uranium Enrichment Services, September 22, 1975, RED-76-30.

Proposed Revisions to the Criteria and Contracts for Uranium Enrichment Services, March 5, 1973, B-159687.

Review of Proposed Revisions to the Price and Criteria for Uranium Enrichment Services, July 17, 1970, B-159687.

We believe that the new Department of Energy, upon assuming ERDA's functions and responsibilities, should seek and encourage private companies to continue their efforts to pursue commercialization of advanced uranium enrichment technologies, such as gas centrifuge and laser isotope separation. We recognize that Government assistance and assurances will be necessary, although we are certainly not in favor of the types and degree of assistance which was to be provided in the previously proposed Nuclear Fuel Assurance Act of 1975.

Removing the enrichment pricing barrier is one of the more acceptable forms of assistance. We previously reported that since the Government's enrichment capacity was fully contracted for, its enrichment charge had little competitive importance to potential private enrichers. However, the Government is now planning to construct additional capacity and its price may be a significant barrier to entrance in the uranium enrichment market by private enterprise.

We believe the ERDA Administrator (and eventually the Secretary of Energy) should be allowed to include in the enrichment charge those factors (e.g., return on equity and business risk) that are required so that private enrichers are not discouraged from building enrichment capacity beyond the next Government increment.

The House bill would continue a pricing structure that results in a subsidy because the recipients of ERDA's enrichment services would continue to pay a lower price than they would have to pay in the market. Although it is important to recognize that uranium enrichment is a minor factor in the total price of electricity to the average consumer, it is an obviously large cost to individual electric utilities having sizable nuclear electric capacity. Decisions by utilities to build additional electric capacity must be based on, but not necessarily be limited to, the comparative economics of coal-fired or nuclear powered generators. Artificial disturbances to the overall price, such as Federal subsidies, can obviously help persuade a utility to pick one source over another. Unless the need for these subsidies is demonstrated, we prefer to see them eliminated whenever possible.

CERTIFICATION OF ENRICHMENT PRICE

We also have a reservation about the provision in the House bill that would require the Comptroller General to certify that the price charged for uranium enrichment

services does not recover revenues greater than the sum of all Government costs and the normal and ordinary business expenses which would otherwise be incurred by a private operator providing similar services. We are strongly opposed to this provision and urge that it not be adopted in conference. This provision would require GAO to perform functions that would be inconsistent with its role as an independent evaluator in the legislative branch and could set an undesirable precedent for similar provisions in other legislation that would require a large part of our staff to perform cost and price certifications for department heads rather than evaluating programs for the Congress.

As you know, GAO operates as the only control agency in the legislative branch to ensure compliance with Federal statutes governing the expenditure of public moneys appropriated by the Congress. Our primary aim is to assist in improving the effectiveness, efficiency, and economy of Government programs. The Congress has long looked to GAO to provide objective information and evaluations of how well legislation is being implemented by the executive agencies. In our role as an independent evaluator, we are expected to provide the Congress with suggestions for improvements. Certification of cost and price determinations is inconsistent with that role. Such certification would conflict with the concept of independence and objectivity which must be implicit in any review by our Office relative to uranium enrichment service activities. Further, to audit financial transactions and data which GAO had previously certified would violate the standard of independence in audit.

This is not to say that we would ignore uranium enrichment pricing. As always, our Office would maintain, under our current legislative authority, audit oversight of all the activities relating to the Government's uranium enrichment services, including the prices arrived at for such services. For example, we plan to issue within the next month a comprehensive report dealing with uranium enrichment policies and operations. We have also begun a review of ERDA's uranium enrichment pricing policies which we expect to complete next year. This review will determine whether the Government's uranium enrichment pricing policies are consistent with congressional directives and how the price being charged for nuclear fuel being exported relates to the price of imported oil.

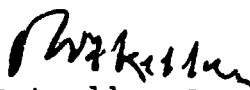
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In summary, we would appreciate any action you could take to make our concerns known in conference and to amend

the legislation accordingly. For your convenience, we are providing, in Enclosure III, suggested language to replace the enrichment pricing versions as accepted by the House and Senate.

We are sending an identical letter to the Chairman, Senate Committee on Energy and Natural Resources, and copies ~~to Representatives Helvin Price and Walter Flowers.~~

Sincerely yours,


Deputy Comptroller General
of the United States

Enclosures - 3

EXCERPT ON URANIUM ENRICHMENT
PRICING LEGISLATION (H.R. 6796) AS
PASSED BY THE HOUSE ON SEPTEMBER 23, 1977

TITLE V - BASIS FOR GOVERNMENT
CHARGE FOR URANIUM ENRICHMENT
SERVICES

SEC. 501. Subsection 161 v. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"v. (A) enter into contracts with persons licensed under sections 53, 63, 103, or 104 for such periods of time as the Administrator of the Energy Research and Development Administration may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration; and

"(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection: Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; (iii) any prices established under this subsection shall be on such a

basis as will recover not less than the Government's costs over a reasonable period of time; and (iv) no change in price for uranium enrichment services shall permit the recovery of revenues greater than the sum of all Government costs and the normal and ordinary business expenses which would otherwise be incurred by a private operator providing similar services and so certified by the Comptroller General of the United States: And provided further, That the Administrator of the Energy Research and Development Administration, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials or foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Administrator shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: Provided, That before the Administrator establishes such criteria, or any price for uranium enrichment services, the Administrator shall transmit such criteria or price, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and

Natural Resources of the Senate and wait a period of forty-five calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action."

EXCERPT ON URANIUM ENRICHMENT
PRICING LEGISLATION (S. 1811)
AS PASSED BY THE SENATE ON JULY 12, 1977

TITLE II - BASIS FOR GOVERNMENT
CHARGE FOR URANIUM ENRICHMENT
SERVICES

SEC. 201. Subsection 161 v. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"v. (A) enter into contracts with persons licensed under sections 53, 63, 103, or 104 for such periods of time as the Administrator of Energy Research and Development may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration; and

"(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection: Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be

on such a basis as will recover not less than the Government's cost over a reasonable period of time and, in the opinion of the Administrator of Energy Research and Development, will not discourage the development of domestic sources of supply independent of the Energy Research and Development Administration: And provided further, That the Administrator of Energy Research and Development, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Administrator of Energy Research and Development shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: Provided, That any change in enrichment services prices in the first proviso above shall not be implemented for a period of sixty days, during which the Congress is in continuous session, after the transmission of the proposed price to the President of the Senate, the Speaker of the House of Representatives, the Senate Committee on Energy and Natural Resources and the House Committee on Science and Technology. Such prices shall

be considered authorized by the Congress unless either House of Congress approves a resolution of disapproval of such prices prior to the expiration of the aforementioned sixty-day period. The Senate Committee on Energy and Natural Resources and the House Committee on Science and Technology shall have single jurisdiction over any such resolution of disapproval introduced pursuant to this section. If such a resolution of disapproval has been introduced, but has not been reported by the committee on or before the fortieth day after transmission of the message, a privileged motion shall be in order in the respective body to discharge the committee from further consideration of the resolution and to provide for its immediate consideration, using the procedures specified for consideration of an impoundment resolution in section 1017 of the Impoundment Control Act of 1974 (31 U.S.C. 1407).".

SUGGESTED LANGUAGE TO MODIFY
HOUSE AND SENATE LEGISLATION ON
URANIUM ENRICHMENT PRICING

TITLE V - BASIS FOR GOVERNMENT
CHARGE FOR URANIUM ENRICHMENT
SERVICES

SEC. 501. Subsection 161 v. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"v. (A) enter into contracts with persons licensed under sections 53, 63, 103, or 104 for such periods of time as the Administrator of the Energy Research and Development Administration may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration; and

"(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Energy Research and Development Administration in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection: Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) price for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this section shall be on such a

basis as will recover the sum of all Government costs plus the normal and ordinary business expenses which would otherwise be incurred by a private operator providing similar services, and amounts for business risk and a reasonable return on equity which in the opinion of the Administrator of the Energy Research and Development Administration are deemed necessary to not discourage the development of domestic sources of supply independent of the Energy Research and Development Administration: And provided . . . *

*House and Senate bills differ on the provisions for Congressional review. These differences, which are shown in Enclosures I and II, are not the subject of this letter.